IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6366 of 2005

With

SPECIAL CIVIL APPLICATION No. 6367 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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1	Whether Reporters of Local Papers may be allowed to see the judgement ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgement ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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JITENDRABHAI TARACHAND MADHULIKA JITENDRABHAI - Petitioner(s)

Versus

STATE OF GUJARAT &3 - Respondent(s)

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Appearance :

MR AJ PATEL for Petitioner No(s).: 1.

MR PR ABICHANDANI, AGP for Respondent No(s).: 1.

NOTICE SERVED for Respondent No(s).: 1,2,3.

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CORAM :HON'BLE MR JUSTICE AKIL KURESHI

Date : 14/06/2005

ORAL JUDGMENT

Affidavit-in-reply filed on behalf of the respondents No.2 and 3 is taken on record.

RULE. Learned AGP, Mr.Abichandani waives service of notice of rule on behalf of the respondents.

The petitioners have primarily challenged the order passed by the Additional Secretary (Appeals), Revenue Department, Government of Gujarat, on 23rd February, 2005. Before the said authority revision applications filed by the petitioners against the orders passed by the lower authorities are pending. The proceedings are filed by the petitioners under Section 211 of the Bombay Land Revenue Code. Along with revision applications, the petitioners also prayed for interim protection and prayed that the orders passed by the authorities below which are under challenge before the said authority be stayed till the final disposal of the revision applications. By the impugned orders dated 23rd February, 2005, the Additional Secretary (Appeals) was pleased to reject the applications for interim injunction seeking stay against the order passed by the Collector on 17th December, 2004. The petitioners have produced another communication also dated 23rd February, 2005, by which the Additional Secretary (Appeals) was pleased to fix further hearing of the revision applications on 28thMarch, 2005. It is contended on behalf of the petitioners that the revision applications are pending before the Additional Secretary (Appeals) and no final orders have been passed so far.

Normally, when the authority has entertained the revision petition and the final disposal thereof is awaited, it would be desirable that the interim protection prayed for by the parties is entertained. In the present case, specially, if no interim protection is granted to the

petitioners the same would virtually amount to rendering their revision petitions infructuous. In the facts of the case, therefore, I find that the authorities erred in not granting stay against the order of the Collector dated 17th December, 2004. The impugned order dated 23rd February, 2005, therefore, cannot be sustained and the same is quashed and set aside. The order dated 17th December, 2004, passed by the Collector, Ahmedabad, shall remain stayed till the Additional Secretary (Appeals) disposes of the revision applications filed by the petitioners. The petitioners are also directed to maintain status-quo with respect to the suit lands till the final disposal of the revision applications. It will be open for the petitioners to place before the Additional Secretary, their suggestion that the petitioners are ready to pay premium at the prescribed rate for regularization of breach, if any, committed. This Court has not expressed any opinion on the validity of such suggestion and it will be open for the authorities to deal with the same in accordance with law.

With these observations the petitions are disposed of. Rule is made absolute accordingly with no order as to costs.

(AKIL KURESHI, J.)

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